HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3260 OF 2005.

1.Jamshed Nusserwanji Guzder.
2.Minoo Rustomji Shroff,
3. Mrs. Silloo Kaikhushru Kavarana,
4. Mr. Dinshaw Rusi Mehta,
5. Mr. Dady Bejonji Engineer,
6. Mr. Dinsshaw Kaiki Tamboli.
being the present Trustees of Parsi Panchayat Funds & Properties who are also the Trustees of the RN & NN Wadia Trust Bldg., for Parsees having the Trust Office situated at Neville House, Currimbhoy Road, Ballard Estate, Mumbai -38. ..Petitioners.

Versus.

1. Miss. Jini A. billimoria
2. Mr. N. Sanjana. ..Respondents.

Shri. P. S. Dani for the petitioners.

Shri. P. N. Karlekar for the respondent no.2.

CORAM: S.B.MHASE,J.
DATE : AUGUST 7, 2006.

ORAL JUDGMENT:.

1. Heard. Rule returnable forthwith.

2. The order passed in Miscellaneous Notice No. 2745 of 2002 in RAE & R Suit No. 1477/4212 of 1989 is challenged before this Court.

3. It is pertinent to note that RAE & R Suit No.

1477/4212 of 1989 has been filed by seven trustees of the Parsi Panchayat Funds and Properties and also by the trustees of NN & RN Wadia Trust as against the respondents. It appears that during the pendency of the suit there were changes in the trustees. Therefore, to update the cause title of the said suit, initially Interim application bearing No. 4846 of 1998 was filed with the signature of the Secretary. However, the notice was discharged by order dated 15.6.1999 on a ground that Secretary cannot file such application. Thereafter, review application was filed bearing No. 118 of 2000. It was discharged by order dated 19.10.2001. Thereafter Interim Notice bearing No. 2745 of 2002 was filed with the signatures of all the trustees. That has been rejected on a ground of res-judicata. Needless to state that reason is absurd and wrong. It is well settled principle that in the matters of Trust all trustees are necessary parties, because they hold the properties as a joint-tenants and not as tenants-in-common and in order to cure the defect repeatedly the applications after application are filed. However, unfortunately the Court went on rejecting the said applications. The Court has lost the sight of the fact that earlier interim proceedings should not operate as res-judicata. Section 11 of the Code of Civil Procedure contemplates a final adjudication between the

same parties of a substantial issues involved in the said suit. When the suit is pending and proper parties are trying to come on record invoking the provisions of Order-I Rule-10 of the Code of Civil Procedure, 1908, instead of allowing such applications, unfortunately such applications have been rejected without following the spirit of the provisions of law.

4. In the result, the petition is allowed. Interim (Miscellaneous) Notice No. 2745 of 2002 in RAE & R Suit No. 1477 of 1989 is hereby allowed. Petitioner shall carry out the amendments in the original suit within a period of four weeks from today.

(S.B.MHASE, J.)

:sac/2006/single.